

Plaintiffs' Exhibit B

Cari Laufenberg

From: David Ko
Sent: Friday, January 8, 2021 12:37 PM
To: Kutscher Clark, Martie; Lesley Weaver; Anne Davis; Matthew Montgomery; Derek Loeser; Cari Laufenberg; Chris Springer
Cc: Stein, Deborah L.; Falconer, Russ; Davis, Colin B.; Swanson, Alexander; Mumm, Laura C.; Sullivan, Luke M.; Streit, Craig
Subject: RE: In re Facebook, Inc. Consumer Privacy User Profile Litigation: Privilege Logs
Attachments: Copy of ADI Privilege Logs Consolidated.xlsx

Martie,

Thank you for confirming the identities of the data scientists and engineers that were listed on the privilege logs.

As for the proposed stipulation, the briefing schedule reflects Judge Corley's order that the "Court anticipates that briefing on the privilege dispute will commence no later than some time in January 2021." Discovery Order No. 7. Consistent with that schedule and Judge Corley's desire to rule on exemplar documents of communications that no lawyers were on (see July 13 Tr. 45:13-19), there is no need to meet and confer further regarding the exemplar documents Facebook has identified, as plaintiffs have no questions, but will simply challenge the assertion of privilege over documents where no attorneys are identified. Plaintiffs intend to seek, among other things, an in camera review of these documents or at least a sampling of these documents so that Judge Corley can in fact rule on these issues with context as she expressed a desire to do. *Id.* at 36:16-19 ("Because the way I'm going to be able to adjudicate this is to take some exemplars, and rule, and then the parties then can use that and apply it."). For your convenience, those documents appear in the attached spreadsheet which are based on the logs you provided to us.

To be clear, these are not the only category of documents that Plaintiffs believe are not subject to the attorney-client privilege, but in order for Judge Corley to rule on Facebook's privilege claims with respect to ADI, Plaintiffs believe this category of documents will give the Court the requisite context to rule. The parties have conferred over these ADI issues for nearly one year, and there is no reason to delay the resolution of this issue any further.

Furthermore, Judge Corley did not refuse to enter a briefing schedule at the last conference as you indicate. The parties and the Court instead ran out of time to discuss the issue.

If Facebook does not agree to the proposed schedule proposed by Plaintiffs or have an alternative briefing schedule to propose, Plaintiffs intend to ask Judge Corley to set one at the next discovery hearing on January 15. Thank you.

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From: Kutscher Clark, Martie <MKutscherClark@gibsondunn.com>
Sent: Tuesday, January 5, 2021 8:55 AM
To: David Ko <dko@KellerRohrback.com>; Lesley Weaver <lweaver@bfalaw.com>; Anne Davis <adavis@bfalaw.com>; Matthew Montgomery <mmontgomery@bfalaw.com>; Derek Loeser <dloeser@KellerRohrback.com>; Cari Laufenberg <clauenberg@KellerRohrback.com>; Chris Springer <cspringer@KellerRohrback.com>
Cc: Stein, Deborah L. <DStein@gibsondunn.com>; Falconer, Russ <RFalconer@gibsondunn.com>; Davis, Colin B. <CDavis@gibsondunn.com>; Swanson, Alexander <ASwanson@gibsondunn.com>; Mumm, Laura C. <LMumm@gibsondunn.com>; Sullivan, Luke M. <LSullivan@gibsondunn.com>; Streit, Craig <CStreit@gibsondunn.com>
Subject: RE: In re Facebook, Inc. Consumer Privacy User Profile Litigation: Privilege Logs

David,

I hope you had a happy holiday.

As we discussed previously, we identified 5 data scientists and/or engineers during our review of the materials collected from the 26 agreed-upon custodians. We ran the names of the 6 apps used for the ADI sampling exercise and those apps' ID numbers on those employees' files and did not locate responsive documents that were not already in our review set. The names of these data scientists/engineers appear on our privilege log, but for clarity they are [REDACTED]

With respect to Plaintiffs' proposed stipulation, it is premature to set a briefing schedule regarding Plaintiffs' privilege challenges at this stage, given that Plaintiffs have not raised any challenges to the privilege logs Facebook served on December 10. Consistent with the Stipulation and Order Governing Privilege Logs (Dkt. 462), Plaintiffs must "identify in writing any particular privilege log entries that it asserts are not privileged" and must explain its challenges "with reasonable specificity . . . as to each privilege log entry." Id. at ¶¶ 1-2. Once Plaintiffs provide this information, the Stipulation and Order provides Facebook an opportunity to respond, to be followed by a meet and confer process. Id. at ¶¶ 3-4. Only after the parties have met and conferred regarding any outstanding disputes shall they "meet and confer and propose a reasonable briefing schedule" to address any outstanding disputes. Id. at ¶ 4. We note that Plaintiffs asked Judge Corley to order a briefing schedule at the last discovery hearing and Judge Corley explicitly declined this request.

Please identify Plaintiffs' challenges to the privilege logs served on December 10 no later than January 11.

Thank you,
Martie

Martie Kutscher Clark

GIBSON DUNN

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From: David Ko <dko@KellerRohrback.com>
Sent: Tuesday, December 22, 2020 2:57 PM
To: Kutscher Clark, Martie <MKutscherClark@gibsondunn.com>; Lesley Weaver <lweaver@bfalaw.com>; Anne Davis <adavis@bfalaw.com>; Matthew Montgomery <mmontgomery@bfalaw.com>; Derek Loeser <dloeser@KellerRohrback.com>; Cari Laufenberg <clauenberg@KellerRohrback.com>; Chris Springer <cspringer@KellerRohrback.com>

Cc: Stein, Deborah L. <DStein@gibsondunn.com>; Falconer, Russ <RFalconer@gibsondunn.com>; Davis, Colin B. <CDavis@gibsondunn.com>; Swanson, Alexander <ASwanson@gibsondunn.com>; Mumm, Laura C. <LMumm@gibsondunn.com>; Sullivan, Luke M. <LSullivan@gibsondunn.com>; Streit, Craig <CStreit@gibsondunn.com>
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[External Email]

Martie,

Following up on the below email and our two previous meet and confers where we asked for this info. Consistent with the parties' ADI stips, please identify the custodians that appear in these privilege logs that are the data scientists and engineers.

In addition, consistent with Discovery Order No. 7 ("The Court anticipates that briefing on the privilege dispute will commence no later than some time in January 2021."), we attach the proposed briefing schedule so Judge Corley can resolve the ADI privilege disputes between the parties. Thank you.

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From: David Ko
Sent: Monday, December 14, 2020 8:34 PM
To: Kutscher Clark, Martie <MKutscherClark@gibsondunn.com>; Lesley Weaver <lweaver@bfalaw.com>; Anne Davis <adavis@bfalaw.com>; Matthew Montgomery <mmontgomery@bfalaw.com>; Derek Loeser <dloeser@KellerRohrback.com>; Cari Laufenberg <clauenberg@KellerRohrback.com>; Chris Springer <cspringer@KellerRohrback.com>
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Martie,

Can you confirm that pursuant to the parties' ADI Stip entered by Judge Corley (Dkt 533), all responsive documents relating to these six apps were produced on October 26? Can you also confirm that no other responsive material related to the investigation of these six apps from ADI are contained in any other production, and that Facebook does not plan on producing any additional ADI-related material for these six apps?

Finally, consistent with our agreement in the ADI Sampling Stip (Dkt 514, Ex. A, Paragraph I.C.), can you identify for us the names of the data scientists and engineers who worked on these investigations that you added as custodians? Thank you.

David Ko

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From: Kutscher Clark, Martie <MKutscherClark@gibsondunn.com>
Sent: Thursday, December 10, 2020 8:27 PM
To: Lesley Weaver <lweaver@bfalaw.com>; Anne Davis <adavis@bfalaw.com>; Matthew Montgomery <mmontgomery@bfalaw.com>; Derek Loeser <dloeser@KellerRohrback.com>; David Ko <dko@KellerRohrback.com>; Cari Laufenberg <claufenberg@KellerRohrback.com>; Chris Springer <cspringer@KellerRohrback.com>
Cc: Stein, Deborah L. <DStein@gibsondunn.com>; Falconer, Russ <RFalconer@gibsondunn.com>; Davis, Colin B. <CDavis@gibsondunn.com>; Swanson, Alexander <ASwanson@gibsondunn.com>; Mumm, Laura C. <LMumm@gibsondunn.com>; Sullivan, Luke M. <LSullivan@gibsondunn.com>; Streit, Craig <CStreit@gibsondunn.com>
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Counsel,

Consistent with the Further Stipulation and Order Regarding Process to Log Exemplar Materials From Facebook's App Developer Investigation (Dkt. 533), attached please find privilege logs reflecting the materials that Facebook reviewed and withheld from production under Paragraph 1 of the stipulation and order. See Dkt. 533 ¶ 3.

Best,
Martie

Martie Kutscher Clark

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